

THIS DISPOSITION IS NOT
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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re **IMAKE Software and Services, Inc.**

Serial No. 75/321,936

Aaron B. Retzer of Epstein, Edell & Retzer for applicant.

Russ Herman, Trademark Examining Attorney, Law Office 102
(Thomas V. Shaw, Managing Attorney).

Before Quinn, Walters and Holtzman, Administrative
Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

An application has been filed by IMAKE Software and
Services, Inc. to register the mark DIGITAL BROADCAST
STUDIO for "integrated computer software and hardware for
single-casting, multi-casting or broadcasting of digital
audio program materials for use in delivery of guaranteed
digital media over a global computer information network."¹

¹ Application Serial No. 75/321,936, filed July 10, 1997, based
on an alleged bona fide intention to use the mark in commerce.

The Trademark Examining Attorney has refused registration under Section 2(e)(1) of the Trademark Act on the ground that applicant's mark, if applied to the goods, would be merely descriptive of them.

When the refusal was made final, applicant appealed. Applicant and the Examining Attorney filed briefs. An oral hearing was not requested.

Applicant argues, in urging that the refusal be reversed, as follows (brief, p. 3):

It is submitted that, from an out-of-context perspective, such a consumer would not recognize the specific nature of goods that are being offered by applicant under "DIGITAL BROADCAST STUDIO" which does suggest a place (such as a television studio) for broadcast of (presumably) digital programming, but does not describe integrated computer software and hardware and does not, without imagination, allow one to unambiguously spring to an association with something so specific as "integrated software and hardware for the delivery of guaranteed digital media."

Would a consumer, after being appraised of the specifics of applicant's goods, be likely to see a relationship between the mark and the goods? Of course; but he or she would not be as likely to see that relationship beforehand, and would be likely to comment as to how cleverly suggestive the mark is. Applicant respectfully submits that under such circumstances, a mark cannot be deemed merely descriptive.

Applicant goes on to contend that the term "studio" generally is used to describe a place or setting in which creative work is done, and that the presence of the term in applicant's mark therefore is suggestive of a creative solution to the problems associated with broadcasting guaranteed digital media. Further, applicant criticizes the NEXIS evidence relied upon by the Examining Attorney, contending that none of the uses of "digital broadcast studio" is in connection with applicant's type of goods.

The Examining Attorney maintains that the mark sought to be registered is merely descriptive because "applicant's integrated software/hardware package is used either as a functional high-tech replacement for a digital broadcast studio facility or as a link in the transmission of broadcast material by a digital broadcast studio." (brief, p. 3) The Examining Attorney contends that the mark simply "names the type of commercial establishment in which applicant's goods are used." (brief, p. 5) The Examining Attorney has submitted a dictionary definition of the term "studio," of which we take judicial notice. Also of record are five excerpts retrieved from the NEXIS database which show, according to the Examining Attorney, that "digital broadcast studio" is a recognized term of art which immediately conveys a descriptive significance.

It is well settled that a term is considered to be merely descriptive of goods, within the meaning of Section 2(e)(1) of the Trademark Act, if it immediately describes an ingredient, quality, characteristic or feature thereof or if it directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 217-18 (CCPA 1978). It is not necessary that a term describe all of the properties or functions of the goods in order for it to be considered to be merely descriptive thereof; rather, it is sufficient if the term describes a significant attribute or feature about them. Moreover, contrary to the gist of some of applicant's remarks, whether a term is merely descriptive is determined not in the abstract but in relation to the goods for which registration is sought. In re Bright-Crest, Ltd., 204 USPQ 591, 593 (TTAB 1979).

The term "studio" is defined, in relevant part, as "a room or set of rooms specially equipped for broadcasting radio or television programs." *Random House Unabridged Dictionary* (2d ed. 1987) Although, as applicant suggests, the term "studio" may have a variety of meanings, purchasers would be most likely to ascribe to the term the meaning set forth above; that is, a room specially equipped for digital broadcasting. We say this in view of the

specific nature of the goods to which the mark is applied, as well as how it is used in the context of applicant's mark in its entirety.

When the mark is considered as a whole, we find that the mark's meaning would be that shown by the NEXIS articles, that is, as a studio for digital broadcasting. The term DIGITAL BROADCAST STUDIO, as applied to applicant's software and hardware, immediately describes, without conjecture or speculation, a significant characteristic of applicant's goods, namely, that the computer software and hardware for broadcasting of digital audio programs are used in and by digital broadcast studios. To the sophisticated and technically knowledgeable purchasers and users of applicant's goods, who no doubt would be familiar with the trade's use of the term "digital broadcast studio" in connection with digital broadcasting, no imagination would be necessary in order for such persons to perceive precisely the merely descriptive significance of the term as it relates to a significant application of applicant's software and hardware. See: *Towers v. Advent Software Inc.*, 913 F.2d 942, 16 USPQ2d 1039 (Fed. Cir. 1990)[THE PROFESSIONAL PORTFOLIO SYSTEM is descriptive of computer-based portfolio valuation systems]; *In re Intelligent Instrumentation Inc.*,

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40 USPQ2d 1792 (TTAB 1996)[VISUAL DESIGNER is descriptive of computer programs for controlling the acquisition of data from measurement devices for the purposes of analysis, display, testing and automatic control]; and In re Time Solutions Inc., 33 USPQ2d 1156 (TTAB 1994)[YOUR HEALTH INSURANCE MANAGER is descriptive of software programs for personal record keeping and processing of medical records, health insurance and claims].

Decision: The refusal to register is affirmed.

T. J. Quinn

C. E. Walters

T. E. Holtzman
Administrative Trademark
Judges, Trademark Trial
and Appeal Board

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